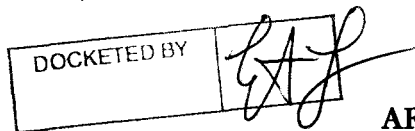


AUG 20 2015



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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

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**Application for a Certificate of Convenience and Necessity to Provide Resold  
Interexchange Service and for Determination that Services of the Applicant are Competitive**

**Applicant: Toly Digital Networks, Inc.**  
**Docket No.: T-20849A-14-0386**

**ORIGINAL**

On November 13, 2014, Toly Digital Networks, Inc. ("TDN", "Applicant" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide resold intrastate interexchange long distance services within the State of Arizona. On December 11, 2014, Staff issued its First Set of Data Requests to TDN. On January 15, 2015, TDN provided Responses to Staff's First Set of Data Requests along with two replacement tariff pages, Original Sheet No. 19 and Original Sheet No. 20, to TDN's proposed Arizona CC Tariff No. 1. On January 30, 2015, Staff issued its Second Set of Data Requests to TDN. On February 18, 2015, TDN provided Responses to Staff's Second Set of Data Requests along with an updated page to its Application.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N to provide competitive resold intrastate interexchange long distance telecommunications services. Staff's review considers the Applicant's technical and financial capabilities, and whether the Applicant's proposed rates will be just and reasonable.

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**REVIEW OF APPLICANT INFORMATION**

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Staff makes the following finding, indicated by an "X," regarding information filed by the Applicant:

- ☒ **The necessary information has been filed to process this Application, and the Applicant has authority to transact business in the State of Arizona.**
- ☒ **The Applicant has published legal notice of the application in all counties where service will be provided.** On May 28, 2015, Applicant filed an Affidavit of Publication in the counties where the authority to provide resold long distance telecommunications services is requested.

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**REVIEW OF TECHNICAL INFORMATION**

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The Applicant has demonstrated sufficient technical capability to provide the proposed services for the following reasons, which are marked:

- ☐ **The Applicant is currently providing service in Arizona.**
- ☒ **The Applicant is currently providing intrastate service in any other states/jurisdictions.**

☒ **The Applicant is a switchless reseller.**

☒ **In the event the Applicant experiences financial difficulty, end users can access other interexchange service providers.**

The Applicant is currently authorized to provide resold interexchange long distance services in twenty-one (21) states<sup>1</sup> and is offering resold interexchange long distance services in twenty-one (21) states.<sup>2</sup> TDN also has an application pending in California. Staff contacted the Public Utility Commissions ("PUC") in eleven (11) states to verify whether TDN is authorized to provide resold long distance telecommunications services in the states listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against TDN. The information Staff obtained, indicates that TDN is authorized to provide resold long distance telecommunications services in the states contacted by Staff, and there have been no consumer complaints filed against TDN in any of those states within the past twelve (12) months.

The Consumer Services Section of the Utilities Division reports no complaints or opinions filed against TDN within Arizona from January 1, 2011 through June 1, 2015. The Corporations Division also reports that the Company is in Good Standing.

In response to Staff Data Request PJG 2-1, TDN indicated that it intends to resell long distance services provided by Level 3 and Verizon in Arizona. TDN also indicated that it intends to sell wholesale to Competitive Local Exchange Carriers ("CLECs") and Incumbent Local Exchange Carriers ("ILECs") and not to end users. The Applicant does not plan to maintain employees in Arizona. TDN currently has sixteen (16) employees. The seven members of TDN's digital network team average over twenty (20) years of experience each in the telecommunications industry. Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide interexchange resold long distance telecommunications services in Arizona.

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#### REVIEW OF FINANCIAL INFORMATION

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☐ **The Applicant is required to have a performance bond to provide resold interexchange service in the State of Arizona.**

On May 5, 2015, TDN provided unaudited financial statements for the two years ending December 2013 and December 2014. The financial statements for year ending 2014 list total assets of \$533,798; total negative equity of \$260,566 and a net income of \$45,659. The financial statements for year ending 2013 list total assets of \$521,176; total negative equity of \$216,225 and a negative net income of \$272,351. The Applicant did not provide notes related to the financial statements.

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<sup>1</sup> Colorado, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

<sup>2</sup> Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

The Applicant stated in its proposed Arizona CC Tariff No. 1, on Original Sheet No. 13, at Sections 2.8 and 2.9, entitled Deposit and Advance Payments, respectively, that the Company does not require deposits or advance payments.

If this Applicant experiences financial difficulty, there should be minimal impact to its customers because there are many companies that provide resold interexchange telecommunications services or customers may choose a facilities-based provider. If customers want interexchange service from a different provider immediately, customers are able to dial a 101XXXXXX (dial around) access code. In the longer term, customers may permanently switch to another company.

The Applicant indicated in response to Staff's Data Request<sup>3</sup> that an issue involving the Federal Communications Commission ("FCC"), regarding TDN's apparent failure to timely file a compliant annual customer proprietary network information ("CPNI") certification, was settled by consent decree. The Applicant also stated that it immediately hired the consulting firm, GSAssociates, LLC, to begin filing all required FCC and State PUC filings. TDN provided to Staff a copy of the FCC Order, DA 11-1197, released July 25, 2011, which terminated the investigation and cancelled the Notice of Apparent Liability for Forfeiture ("NAL"). A further search of the FCC's website and Google search of TDN and its officers found no additional complaints or instances of civil or criminal investigations, judgments levied by any administrative or regulatory agency, or criminal convictions involving the Applicant or any of its officers, directors, or managers.

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#### REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

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X

The Applicant has filed a proposed tariff with the Commission.

X

The Applicant has filed sufficient information with the Commission to make a fair value determination.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

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<sup>3</sup> PJG 1-1, PJG 1-2, and PJG 1-3, dated January 15, 2015.

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## COMPETITIVE SERVICES' RATES AND CHARGES

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### Competitive Services

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the intrastate interexchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

### Effective Rates

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with Arizona Administrative Code ("A.A.C.") R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

### Minimum and Maximum Rates

A.A.C. R14-2-1109 (A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110.

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## STAFF RECOMMENDATIONS

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Staff has reviewed the Application for a Certificate of Convenience and Necessity to offer intrastate interexchange long distance services as a reseller and the Applicant's petition to classify its intrastate interexchange services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to provide resold intrastate interexchange long distance services, Staff recommends approval of the Application.

In addition, Staff further recommends that:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;
7. The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address, or telephone number;
9. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
10. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
11. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;
12. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in

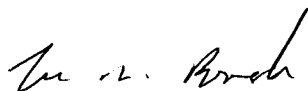
other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis;

13. In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.

Staff recommends that the CC&N granted to the Applicant be considered Null and Void after due process if the Applicant fails to meet the conditions stated below:

1. The Applicant shall file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, which ever comes first, and in accordance with the Decision.

This Application may be approved without a hearing pursuant to A.R.S. § 40-282.



Thomas M. Broderick  
Director  
Utilities Division

Date: \_\_\_\_\_

8/20/2015

Originator: Pamela J. Genung

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Docket No. T-20849A-14-0386  
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SERVICE LIST FOR: Toly Digital Networks, Inc.  
DOCKET NO. T-20849A-14-0386

Ms. Samantha Maqueo  
Regulatory Affairs  
GSAssociates, LLC  
6250 Shiloh Road, Suite 240  
Alpharetta, Georgia 30005

Mr. Thomas M. Broderick  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Janice Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Dwight Nodes  
Acting Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007